S.B.Civil Sales Tax Revision No.1430/01
C.T.O. vs. M/s Zohara Marbles & Tiles Pvt. Ltd. & ors.

Date of Order: 01.8.2006.

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.
Mr. Tribhuwan Gupta for the non-petitioners.

The copies of the documents relied upon by the learned counsel for the petitioner-revenue have been supplied to the learned counsel for the non-petitioner.

Heard learned counsel for the parties.

The assessee-non-petitioner no.1 applied for grant of tax exemption under the Sales Tax Incentive Scheme, 1989. The matter was placed before the District Level Screening Committee. The District Level Screening Committee observed that since the details which were sought from the assessee were not provided by the assessee despite the fact that the assessee submitted a reply, therefore, the assessee failed to prove achievement of the target required for grant of tax exemption benefit under the Scheme of 1989 on the ground of expansion or diversification.

The said decision of the District Level Screening Committee was challenged by the assessee by preferring appeal before the Rajasthan Tax Board, Ajmer. The Rajasthan Tax Board, Ajmer, after observing that the assessee-Unit earlier was engaged in the edge cutting and polishing work of stone and that activity cannot be considered as manufacturing

and, therefore, the assessee's case is covered under the scheme as new industrial unit. The Tax Board by order dated 23.2.1999, set aside the order of the District Level Screening Committee dated 19.12.1998 and remanded the matter to the District Level Screening Committee with the direction to the committee to send the recommendation for tax exemption.

Being aggrieved against the order of the Tax Board dated 23.2.1999, the revenue has preferred this revision petition.

The learned counsel for the petitioner submits that the District Level Screening Committee, on the basis of material submitted before it and on the basis of the stand of the assessee itself, considered the case of the assessee for grant of tax exemption under the scheme of 1989 on the basis of the claim of the assessee on the ground of expansion of the existing unit and achieving the target of more than 85%. The assessee's prayer for grant of tax exemption on the ground that new industrial unit has been set up by the assessee, was never the case before the District Level Screening Committee. According to the learned counsel for the petitioner, the Tax Board decided the matter altogether differently inasmuch as the Tax Board held that the assessee-Unit is a new unit and edge cutting and polishing of stone is not industrial activity. The learned counsel for the revenue has shown certain documents in support of his contention, copies of which are provided to learned counsel for the

assessee. According to the learned counsel for the revenue the assessee himself submitted letter before the District Industrial Centre on 18.10.1997 stating therein that the assessee is entitled to tax benefit as the assessee has expanded its industrial activities by addition of 25% in fixed assets, 25% enhancement of power and 85% production in previous year.

The learned counsel for the assessee submits that the assessee originally submitted application for grant of tax benefit on the ground of setting up new industrial unit and, therefore, the Tax Board rightly decided in favour of the assessee holding the assessee as a new industrial unit.

I considered the submissions of the learned counsel for the parties and perused the facts of the case.

It appears from the order of the Tax Board dated 23.2.1999 that the Tax Board looked into the order of the District Level Screening Committee but while deciding the appeal of the assessee, addressed itself to the only point that whether the assessee unit is a newly set up industrial unit or not ? Whereas one of the letters of assessee shows that assessee subsequently claimed benefit on the basis of expansion of existing industry. The Tax Board has not considered the relevant documents for the purpose of finding out the eligibility of the assessee, may it be for setting up new industry or on the ground of expansion.

In view of the above facts, it will be appropriate that the District Level Screening Committee be directed to decide the issue afresh whether the assessee is entitled for any benefit on the ground that it is a new industrial unit or assessee is entitled to any benefit because of expansion in existing unit. It is for the District Level Screening Committee to find out whether the assessee unit is a new unit in terms of the scheme of 1989 or not also.

In view of the above, the order of the Tax Board dated 23.2.1999 holding that the assessee-unit is a new unit and is eligible to tax exemption benefit under the scheme of 1989, is set aside. The matter is remanded back to the District Level Screening Committee to decide the matter on the basis of material available with the District Level Screening Committee after hearing both the parties. The matter may be decided within a period of two months from the date of receipt of copy of this order. Meanwhile, if any tax exemption has been availed by the assessee, that shall not be recovered from the assessee till the District Level Screening Committee decides the matter. Both the parties are directed to appear before the District Level Screening Committee on 28.8.2006.

The revision petition is disposed of as indicated above.

(PRAKASH TATIA),J.

mlt.